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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

S4 15 Cr. 867 RMB

5 MEHMET HAKAN ATILLA,

6 Defendant.

7 -----x

8
9 January 3, 2018
10 10:15 a.m.

11
12 Before:

13 HON. RICHARD M. BERMAN,

14 District Judge
15 and a jury

16
17 APPEARANCES

18 JOON H. KIM,
19 United States Attorney for the
20 Southern District of New York
21 MICHAEL D. LOCKARD,
22 SIDHARDHA KAMARAJU,
23 DAVID W. DENTON, JR.,
24 DEAN C. SOVOLOS,
25 Assistant United States Attorneys

I133ATI1

(APPEARANCES Continued)

HERRICK, FEINSTEIN LLP (NYC)
Attorneys for defendant Atilla
BY: VICTOR J. ROCCO, Esq.
THOMAS ELLIOTT THORNHILL, Esq.
- and -
FLEMING RUVOLDT, PLLC
BY: CATHY ANN FLEMING, Esq.
ROBERT J. FETTWEIS, Esq.
- and -
LAW OFFICES OF JOSHUA L. DRATEL, P.C.
BY: JOSHUA LEWIS DRATEL, Esq.
Of counsel

-and-

McDERMOTT WILL & EMERY
BY: TODD HARRISON

Also Present:

JENNIFER McREYNOLDS, Special Agent FBI
MICHAEL CHANG-FRIEDEN, Paralegal Specialist USAO
MS. ASIYE KAY, Turkish Interpreter
MS. SEYHAN SIRTALAN, Turkish Interpreter

I133ATI1

(In open court; jury not present)

THE COURT: Happy New Year.

So we got a note from the jury I guess 10 minutes or so ago which says "Judge Berman, Happy New Year. (1) What happens if we have agreement on some but not all of the counts. And (2) could we have another copy of the verdict sheet. Thanks."

So two is easy. Two is yes. I think one is not so hard either.

Why don't I make copies of this for you and you can talk among yourselves and then meet and confer and see if you agree on what we should do. I have a thought myself but I'd rather hear from you first.

(Pause)

THE COURT: Have you all had an opportunity to talk?

MR. LOCKARD: Not between the two tables yet, your Honor.

THE COURT: Oh. Okay.

MR. HARRISON: We're still talking to the defendant, your Honor. If you can just give us a couple more moments, your Honor. Thanks.

THE COURT: Okay.

(Pause)

MR. KAMARAJU: I think we're waiting for their response, your Honor.

I133ATI1

1 THE COURT: Okay.

2 (Pause)

3 MR. ROCCO: So, Judge, we conferred with the
4 government. We haven't come to agreement. We think that the
5 first question -- obviously, we agree, the answer to the second
6 question is very simple. They get another copy of the verdict
7 sheet.

8 But we think the first question is drafted in a
9 hypothetical. What we would propose is the Court say to the
10 jury, respond to the note by saying if it comes to pass that
11 you have arrived at a point where you agreed to some and not
12 all counts, please let us know and we'll give you further
13 instructions.

14 The government does not agree with that, and I'm sure
15 Mr. Lockard will tell you why.

16 MR. LOCKARD: So, the government thinks that the Court
17 can easily answer the first question by referring the jury to
18 the charges previously given, the multiple counts charge in
19 particular on pages 55 and 56 of the written jury instructions,
20 and the unanimity charge on pages 63 to 64 of the jury
21 instructions, which I think answers the question that's posed
22 in a way that should be helpful to the jury in its
23 deliberations.

24 THE COURT: All right.

25 MR. ROCCO: Just on that point, we think that the

I133ATI1

1 unanimity charge is fine. The multiple counts charge, though,
2 I think in the context when your Honor gave the jury the
3 instruction, I think it's correct as it stands. But in the
4 context of this note, we're concerned it may appear to be
5 coercive.

6 THE COURT: So, I thought, actually, I would do
7 something far simpler than either of you was suggesting. Based
8 on the note, it doesn't seem to be any kind of deadlock, so to
9 speak. So I thought I would just say, if it is okay with you,
10 my suggestion is that you spend some additional time
11 deliberating together to see if you can reach agreement on all
12 the counts. And then we'll enclose a copy of the verdict
13 sheet.

14 MR. ROCCO: That's fine with us.

15 MR. LOCKARD: That's fine. We agree that the note
16 certainly doesn't suggest deadlock.

17 THE COURT: Okay. I'm going to add "Happy New Year."
18 We made copies for you. Why don't you take a final look. If
19 it's okay with you, we'll send it into the jury.

20 MR. LOCKARD: No objections.

21 THE COURT: Okay. It's okay?

22 MR. ROCCO: One second, your Honor, please.

23 We like the Happy New Year, your Honor.

24 THE COURT: We're going to send it back in.

25 (Recess pending verdict)

I133ATI2

Verdict

(In open court; jury not present. Time noted 2 p.m.)

THE COURT: We have two notes. One is a ministerial one asking for lunch orders, which I'm just putting on the record. But the other is indicating that there is a verdict on all counts.

So, my practice is Christine as the court deputy will bring out the jury and she'll do the polling of the jury. And we'll do that now.

(Jury present; time noted 2:05 p.m.)

THE COURT: Please be seated, everybody. We understand that the jury has reached a verdict. And there is a procedure that we follow that Christine will implement.

THE DEPUTY CLERK: Madam Foreperson, if you can please stand.

In the matter of the United States of America v. Mehmet Hakan Atilla, how do you, the jury, find as to the following questions:

Bank fraud as charged in Count Three of the indictment.

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: Money laundering as charged in Count Five of the indictment.

THE FOREPERSON: Not guilty.

THE DEPUTY CLERK: Conspiracy to defraud the United States as charged in Count One of the indictment.

I133ATI2

Verdict

1 THE FOREPERSON: Guilty.

2 THE DEPUTY CLERK: Conspiracy to violate IEEPA as
3 charged in Count Two of the indictment.

4 THE FOREPERSON: Guilty.

5 THE DEPUTY CLERK: Conspiracy to commit bank fraud as
6 charged in Count Four of the indictment.

7 THE FOREPERSON: Guilty.

8 THE DEPUTY CLERK: Conspiracy to commit money
9 laundering as charged in Count Six of the indictment.

10 THE FOREPERSON: Guilty.

11 THE DEPUTY CLERK: You may be seated, please.

12 Ladies and gentlemen of the jury, please listen to
13 your verdict as it stands recorded.

14 As to bank fraud charged in Count Three of the
15 indictment: Guilty.

16 Money laundering as charged in Count Five of the
17 indictment: Not guilty.

18 Conspiracy to defraud the United States as charged in
19 Count One of the indictment: Guilty.

20 Conspiracy to violate IEEPA as charged in Count Two of
21 the indictment: Guilty.

22 Conspiracy to commit bank fraud as charged in Count
23 Four of the indictment: Guilty.

24 Conspiracy to commit money laundering as charged in
25 Count Six of the indictment: Guilty.

I133ATI2

Verdict

1 Juror Number 1, is that your verdict?

2 JUROR NO. 1: Yes.

3 THE DEPUTY CLERK: Juror Number 2, is that your
4 verdict?

5 JUROR NO. 2: Yes.

6 THE DEPUTY CLERK: Juror Number 3, is that your
7 verdict?

8 JUROR NO. 3: Yes.

9 THE DEPUTY CLERK: Juror Number 4, is that your
10 verdict?

11 JUROR NO. 4: Yes.

12 THE DEPUTY CLERK: Juror Number 5, is that your
13 verdict?

14 JUROR NO. 5: Yes.

15 THE DEPUTY CLERK: Juror Number 6, is that your
16 verdict?

17 JUROR NO. 6: Yes.

18 THE DEPUTY CLERK: Juror Number 7, is that your
19 verdict?

20 JUROR NO. 7: Yes.

21 THE DEPUTY CLERK: Juror Number 8, is that your
22 verdict?

23 JUROR NO. 8: Yes.

24 THE DEPUTY CLERK: Juror Number 9, is that your
25 verdict?

I133ATI2

Verdict

1 JUROR NO. 9: Yes.

2 THE DEPUTY CLERK: Juror Number 10, is that your
3 verdict?

4 JUROR NO. 10: Yes.

5 THE DEPUTY CLERK: Juror Number 11, is that your
6 verdict?

7 JUROR NO. 11: Yes.

8 THE DEPUTY CLERK: Juror Number 12, is that your
9 verdict?

10 JUROR NO. 12: Yes.

11 THE DEPUTY CLERK: Your Honor, jurors polled; verdict
12 is unanimous.

13 THE COURT: So, that concludes your jury service.
14 It's been a pleasure to work with you. And a little unusual
15 that we had this week break in between, but I never had any
16 doubts that you would all be back first thing today.

17 So, I thank you for your service. The jury is
18 excused. If you remain for just a minute or so in the jury
19 room, I'd like to come back and thank you personally just for a
20 minute or so. Thank you very much.

21 (Jury dismissed; time noted 2:08 p.m.)

22 THE COURT: I would ask everybody to remain here. We
23 have some scheduling issues, as you are aware, to do. I'll
24 just be a minute in the jury room. So if everybody would
25 please be seated. Thank you.

I133ATI2

Verdict

1 (Pause)

2 THE COURT: We have a couple of things to talk about.
3 One is a motion schedule. Remind me, what, if anything, is
4 outstanding? Is that supplemental defense application?

5 MR. ROCCO: Essentially, Judge, we wrote the Court a
6 letter last week.

7 THE COURT: Yes, that's what I'm talking about.

8 MR. ROCCO: Essentially we're going to reserve that
9 for our post-trial Rule 29 motion. That's how we left it. The
10 government was going to respond to the letter. I don't know if
11 it is still going to respond to our submission.

12 THE COURT: What would you like as a date -- did I set
13 that?

14 MR. ROCCO: No, you did not.

15 THE COURT: Okay. Post-trial Rule 29, how much time
16 do you need for that?

17 MR. ROCCO: We have 14 days under the statute, Judge.
18 Do you want to give us three weeks?

19 THE COURT: The 24th?

20 MR. ROCCO: That's fine. Judge, we still have our
21 original Rule 29 motion.

22 THE COURT: I know that. I'll get to that. I will.
23 That's fully briefed.

24 MR. ROCCO: Yes.

25 THE COURT: So, January -- I'm sorry. Did I just say

I133ATI2

Verdict

1 the 24th?

2 MR. ROCCO: Yes, sir.

3 THE COURT: Okay. What about the government response?

4 MR. LOCKARD: Your Honor, could we have three weeks to
5 oppose?

6 THE COURT: Is that the 14th?

7 MR. LOCKARD: That sounds right.

8 THE COURT: What I will do now is direct that a
9 presentence report be prepared by the probation department.
10 And defense counsel, I suppose you do but I always ask if you
11 wish to be present in connection with any interview of
12 Mr. Atilla.

13 MR. ROCCO: We do, your Honor.

14 THE COURT: I'll direct that the presentence
15 investigation report be made, but there be no interview of
16 Mr. Atilla unless defense counsel is given the opportunity to
17 be present.

18 And Mr. Atilla, I always say this at this point. I
19 advise people that it is in their best interests to cooperate
20 with the probation department who prepares this presentence
21 report, since the report would be important in my decision as
22 to what the appropriate sentence would be in this case. So I
23 suggest that you tell them what they ask, of course consulting
24 with your counsel, both the good things and perhaps the
25 not-so-good things. Because if you don't disclose something

I133ATI2

Verdict

1 that they ask about, and it were to come to their attention,
2 then they might say that you were not being truthful with them,
3 and that of course would not be helpful to you.

4 Both the defendant and his counsel will have the right
5 and the opportunity to examine the presentence report before
6 the sentencing date and to file any objections to that report,
7 so I urge you all to review it carefully. And Mr. Atilla, that
8 you review it carefully with your counsel and discuss it with
9 them before the sentencing date. If there are any mistakes in
10 the report, please point them out to your lawyers so that they
11 can point them out to me before sentencing so that I do not
12 proceed on the basis of mistaken information.

13 So I was going to propose, unless you all have a
14 different suggestion, April 11, 2018. That works for
15 everybody?

16 MR. LOCKARD: It does for the government.

17 MR. ROCCO: Yes, your Honor.

18 THE COURT: Okay. And so the defense submission, if
19 you can do that by March 26, and then if the government could
20 make its submission by April 2. Does that work for everybody?

21 MR. LOCKARD: It does, your Honor.

22 THE COURT: Unless you have anything further, I think
23 that's our schedule for the immediate future and through
24 sentencing. And hearing no comments, I'll see you again on
25 April 11. Good day.

I133ATI2

Verdict

1 MR. KAMARAJU: Thank you, your Honor.

2 THE COURT: Thank you.

3 (Adjourned)

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